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MEMORANDUM

May 8, 2003

TO: James Italiano, Kenneth Hawkesworth, and Thomas Butler

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2003-2004 #43, concerning the legal age for purchase, possession, and consumption of alcoholic beverages under certain circumstances

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be:

1. To allow persons eighteen years of age and older but under twenty-one years of age to purchase and possess alcohol beverages.
2. To allow persons eighteen years of age and older but under twenty-one years of age to consume

alcohol beverages only in private or residential areas with no more than eight persons on the property.

3. To continue to prohibit the consumption and possession of alcohol beverages in public places, places of commerce, and private or residential areas with more than eight persons present, by people under twenty-one years of age.

4. To continue to prohibit persons under twenty-one years of age from being allowed in bars or events that serve alcohol.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

Technical questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by initiative:

"Be it Enacted by the People of the State of Colorado:"

Would the proponents consider adding an enacting clause at the beginning of the proposed measure?

2. To provide notice to the public of the proposed changes to the law and to identify whether the proponents intend to amend or add to the state constitution or the Colorado Revised Statutes, and specifically what provisions, an initiative, similar to a bill or referendum, generally refers to the specific statutory or constitutional section that is to be amended or repealed. An initiative usually goes further to provide the specific language within the statutory section that will be amended or repealed. Arguably, the language in the proposed measure does not provide adequate notice to the public of the changes to the law proposed by the initiative. Would the proponents consider specifying the statutory or constitutional sections that are to be amended or repealed in the proposed measure and set for the exact language to be added, amended, or repealed?

3. In Colorado, when a proposed measure adds new language or repeals existing language of the Colorado Revised Statutes, the proposed measure uses an amending clause indicating the specific section of the statutes where new language will be added or existing language will be deleted. The new language itself generally is shown in capital letters. If language from the statutes is to be repealed, the convention is to show the language with dashes through it to indicate it is repealed or to state in the amending clause that the entire provision or provisions are repealed. Each section of the statutes begins with a section heading that includes the section number and a short

description of the section contents.

Would the proponents consider adding appropriate amending clauses to the proposed measure to indicate whether the measure will add new language or repeal existing language of the Colorado Revised Statutes or the state constitution? Would the proponents consider showing existing statutory or constitutional language with dashes through it, if the proponents intend to repeal existing language, or indicating new language with capital letters? In copying existing statutes into the measure, the proponents should include the section heading.

4. Is it the proponents' intent to amend the statutes governing alcohol beverages? If so, would the proponents consider placing this proposed measure within article 47 of title 12 of the Colorado Revised Statutes?
5. Generally, arguments for or against a measure are not included in the language of the proposed measure. Only the plain language of the statutes or constitutional provisions to be enacted or repealed are included in the body of the measure. Would the proponents consider removing the arguments in favor of the measure?
6. The proposal contains the term "alcoholic beverages"; however, the Colorado statutes governing this area describes the area governed as "alcohol beverages". Would the proponents consider changing the phrase "alcoholic beverages" to "alcohol beverages"?

Substantive questions:

1. The proposed measure appears to legalize the purchase, possession, and consumption of alcohol by certain "adults, 18 years and older,". Current statute, however, defines "adult" as a person lawfully permitted to purchase alcohol beverages, and such a person is required to be twenty-one years or older.
 - a. Do the proponents intend for the proposal to address persons twenty-one years of age or older and who are already permitted by law to purchase, possess, and consume alcohol beverages?
 - b. Do the proponents intend for the proposal to address only persons who are eighteen years of age or older but younger than twenty-one years of age? If so, how do the proponents plan on reconciling the classification of adults eighteen years of age or older in the proposal with the classification of adults twenty-one years of age or older in the current alcohol beverages statutes?
2. The proposal appears to legalize the possession of alcohol beverages by persons who are eighteen years of age and older but less than twenty-one years of age in private or residential areas. Is it the proponents' intent to also legalize the possession of alcohol beverages by eighteen to twenty-one year-olds at the place of purchase and at any place after purchase so long as the

alcohol beverages are either not consumed or consumed only in a private or residential area?

3. What is meant by "private or residential areas"? Do the proponents intend to legalize the consumption of alcohol in privately owned stores, vehicles, businesses, or other private, non-residential facilities? Is a "residential area" limited to an apartment or house, or does it include any place on land that is zoned residential?
4. The proposal would permit alcohol consumption by persons eighteen years of age and older only in private or residential areas "with no more than 8 persons on that property". Do the proponents intend for all of the "8 persons" to be of the age of eighteen years and older? If not, do the proponent intend for any of the "8 persons" to be of any age? If the proponents intend for all of the "8 persons" to be at least eighteen years old but less than twenty-one years old, does the measure permit or prohibit additional persons exceeding the eight-person cap who are over the age of twenty-one years to be "on that property"? What if those persons were not consuming alcohol beverages?
5. Do the proponents intend for there to be a penalty for a violation of the "private or residential area" requirement or for a violation of the eight-person cap? If so, do the proponents intend to use current penalty provisions concerning alcohol beverages or do they intend to create new penalty provisions?
6. Is it the intent of the proponents to create a new crime prohibiting persons under twenty-one years of age from attending events, such as professional sporting events, or to enter restaurants or bars where alcohol beverages are served?
7. Section 1 of article V of the Colorado constitution requires that each initiative contain no more than one subject, which must be clearly expressed in its title. The courts have held that an initiative that tends to affect or carry out one general object or purpose satisfies the single subject requirement while a measure that has at least two distinct and separate purposes that are not dependent upon or connected with each other violates the single subject rule. The proposed measure appears to legalize the purchase and possession of alcohol beverages by persons eighteen years of age and older but under twenty-one years of age. The proposal also appears to legalize the consumption of alcohol beverages by such persons in private or residential areas so long as there are no more than eight persons on the property. What do the proponents intend to be the single subject of the proposed measure?